



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,778	10/16/2003	Brett J. Diffley		9850

7590 06/24/2005

Delbert J. Barnard  
BARNARD, LOOP & McCORMACK LLP  
P.O. Box 58888  
Seattle, WA 98138-1888

EXAMINER

CEGIELNIK, URSZULA M

ART UNIT PAPER NUMBER

3714

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

ME

<b>Office Action Summary</b>	<b>Application No.</b> 10/687,778	<b>Applicant(s)</b> DIFFLEY, BRETT J.	
	<b>Examiner</b> Urszula M. Cegielnik	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 9 is/are rejected.
- 7) ☒ Claim(s) 2-8 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

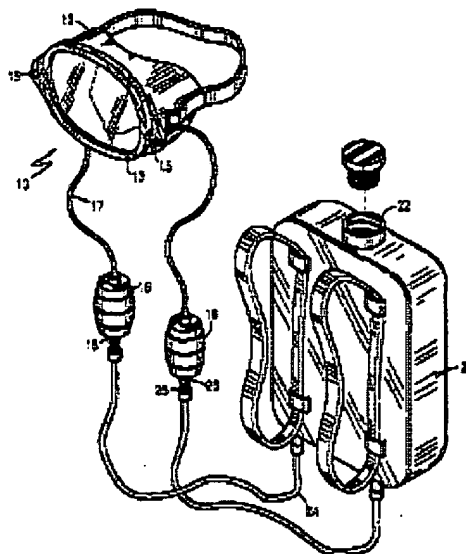
### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Waller.



Waller discloses a water toy comprising a buoyant body (12) having a lower portion (the lower portion of reference numeral 12) adapted to float on a body of water, and an upper portion (the upper portion of reference numeral 12) connected to the lower portion (the lower portion of reference numeral 13) and extending upwardly from it; said upper portion including top (the top portion of reference numeral 12) and side walls (the portion extending rearwardly of reference numeral 15) forming an inner cavity (the inner

Art Unit: 3714

cavity formed by area between the strap and mask), said lower portion (the lower portion of reference numeral 12) including a bottom opening (the point of entry or ingress of the mask for a user's head) entering into said inner cavity (the inner cavity formed by area between the strap and mask); said bottom opening and said cavity (the inner cavity formed by area between the strap and mask) being sufficiently large to receive the head of a person (the cavity is inherently large to receive the head of a person, since the structure is for mounting onto a person's head); said upper portion (the upper portion of reference numeral 12) including at least one sight opening (the upper portion encompassing reference numeral 13) through which a person whose head is in the cavity can look; at least one water gun (15) mounted on the buoyant body, said water gun (15) having a water discharging portion (the upper portion of reference numeral 17) above the water; a pump (20) for pumping water up to and out through the water discharging portion (the upper portion of reference numeral 17), and a hand operated control portion (16) positioned to be grasped by and operated by a hand of a person whose head is in the cavity; whereby said person can use the control (16) to operate the pump (20) cause water to discharge from the discharging portion (the upper portion of reference numeral 17) of the water gun (15); the lower portion includes a second opening (proximate reference numeral 15) on one side of the bottom opening and a third opening (proximate reference numeral 15) on the other side of the bottom opening, a first water gun (15) is situated in the second opening, with its discharging portion (the upper portion of reference numeral 17) above the lower portion of the buoyant body (12) and its hand operated control portion (16) positioned in the water

Art Unit: 3714

below the buoyant body (12) and a second water gun (15) is situated in the third opening (proximate reference numeral 15), with its discharging portion (the upper portion of reference numeral 17) above the lower portion (the lower portion of reference numeral 12) of the buoyant body (12) and its hand operated control portion (16) positioned in the water below the buoyant body (12).

***Allowable Subject Matter***

Claims 2-8 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 22 November 2004 have been fully considered but they are not persuasive.

With regard to Applicant's assertion that Walter does not disclose "a buoyant body with a lower portion adapted to float on a body of water", since Applicant states that the Examiner has not pointed to specific areas in the Walter disclosure that support the concept of a buoyant body with a lower portion adapted to float on a body of water". The Applicant further contends that "it is well known that a conventional snorkeling mask does not float". The Examiner submits that as long as the reference discloses the claimed structure and is capable of performing that function then it meets the claimed limitation. However the Examiner wishes to point to prior art references such as Gines et al. (US Patent Publication No. 2003/0068505, see Abstract) and Baker et al. (US

Art Unit: 3714

Patent No. 4,910,806, see Abstract) that clearly disclose diving masks are indeed buoyant.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the upper portion of the buoyant body projects upwardly from the lower portion") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-

Art Unit: 3714

272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM - 2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

**The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Urszula M. Cegielnik  
Assistant Examiner  
Art Unit 3714

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal flourish extending to the right.

DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700